

1 Rule 1.18. Duties to Prospective Client.

2 (a) A person who discusses with a lawyer the possibility of forming a client-lawyer
3 relationship with respect to a matter is a prospective client.

4 (b) Even when no client-lawyer relationship ensues, a lawyer who has had
5 discussions with a prospective client shall not use or reveal information learned in the
6 consultation, except as Rule 1.9 would permit with respect to information of a former
7 client.

8 (c) A lawyer subject to paragraph (b) shall not represent a client with interests
9 materially adverse to those of a prospective client in the same or a substantially related
10 matter if the lawyer received information from the prospective client that could be
11 significantly harmful to that person in the matter, except as provided in paragraph (d). If
12 a lawyer is disqualified from representation under this paragraph, no lawyer in a firm
13 with which that lawyer is associated may knowingly undertake or continue
14 representation in such a matter, except as provided in paragraph (d).

15 (d) When the lawyer has received disqualifying information as defined in paragraph
16 (c), representation is permissible if:

17 (d)(1) both the affected client and the prospective client have given informed
18 consent, confirmed in writing, or;

19 (d)(2) the lawyer who received the information took reasonable measures to avoid
20 exposure to more disqualifying information than was reasonably necessary to determine
21 whether to represent the prospective client; and

22 (d)(2)(i) the disqualified lawyer is timely screened from any participation in the matter
23 and is apportioned no part of the fee therefrom; and

24 (d)(2)(ii) written notice is promptly given to the prospective client.

25 Comment

26 [1] Prospective clients, like clients, may disclose information to a lawyer, place
27 documents or other property in the lawyer's custody or rely on the lawyer's advice. A
28 lawyer's discussions with a prospective client usually are limited in time and depth and
29 leave both the prospective client and the lawyer free (and sometimes required) to

30 proceed no further. Hence, prospective clients should receive some but not all of the
31 protection afforded clients.

32 [2] Not all persons who communicate information to a lawyer are entitled to
33 protection under this Rule. A person who communicates information unilaterally to a
34 lawyer, without any reasonable expectation that the lawyer is willing to discuss the
35 possibility of forming a client-lawyer relationship, is not a "prospective client" within the
36 meaning of paragraph (a).

37 [3] It is often necessary for a prospective client to reveal information to the lawyer
38 during an initial consultation prior to the decision about formation of a client-lawyer
39 relationship. The lawyer often must learn such information to determine whether there is
40 a conflict of interest with an existing client and whether the matter is one that the lawyer
41 is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that
42 information, except as permitted by Rule 1.9, even if the client or lawyer decides not to
43 proceed with the representation. The duty exists regardless of how brief the initial
44 conference may be.

45 [4] In order to avoid acquiring disqualifying information from a prospective client, a
46 lawyer considering whether or not to undertake a new matter should limit the initial
47 interview to only such information as reasonably appears necessary for that purpose.
48 Where the information indicates that a conflict of interest or other reason for non-
49 representation exists, the lawyer should so inform the prospective client or decline the
50 representation. If the prospective client wishes to retain the lawyer, and if consent is
51 possible under Rule 1.7, then consent from all affected present or former clients must
52 be obtained before accepting the representation.

53 [5] A lawyer may condition conversations with a prospective client on the person's
54 informed consent that no information disclosed during the consultation will prohibit the
55 lawyer from representing a different client in the matter. See Rule 1.0(e) for the
56 definition of informed consent. If the agreement expressly so provides, the prospective
57 client may also consent to the lawyer's subsequent use of information received from the
58 prospective client.

59 [6] Even in the absence of an agreement, under paragraph (c), the lawyer is not
60 prohibited from representing a client with interests adverse to those of the prospective
61 client in the same or a substantially related matter unless the lawyer has received from
62 the prospective client information that could be significantly harmful if used in the
63 matter.

64 [7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as
65 provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the
66 lawyer obtains the informed consent, confirmed in writing, of both the prospective and
67 affected clients. In the alternative, imputation may be avoided if the conditions of
68 paragraph (d)(2) are met and all disqualified lawyers are timely screened and written
69 notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for
70 screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from
71 receiving a salary or partnership share established by prior independent agreement, but
72 that lawyer may not receive compensation directly related to the matter in which the
73 lawyer is disqualified.

74 [8] Notice, including a general description of the subject matter about which the
75 lawyer was consulted, and of the screening procedures employed, generally should be
76 given as soon as practicable after the need for screening becomes apparent..

77 [9] For the duty of competence of a lawyer who gives assistance on the merits of a
78 matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective
79 client entrusts valuables or papers to the lawyer's care, see Rule 1.15.
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